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CHARLES ELMO

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 369.

THE SUSQUEHANNA POWER COMPANY, Appellant,

v.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

APPELLANT'S BRIEF.

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OFFICIAL REPORT OF THE CASE IN THE COURT OF APPEALS OF MARYLAND.

The opinion below was delivered on June 12, 1930, and will be reported in 129 Md. . It is not yet available in the bound volume of Maryland Reports. It is, however, reported in 151 Atl. 32. It also appears in the transcript of record, pp. 64-73.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Appellant has duly filed with this Honorable Court a "Statement As To Jurisdiction On Appeal" in compliance with Rule 12, Section 1 of the Revised Rules of this Court. Inasmuch as the validity of the Public General Laws of Maryland (1924), Article 81, Sections 154, 163, 166 and 166A, and the action of the State Tax Commission thereunder, were by the Appellant in this case called in issue as repugnant to various portions of the Federal Constitution, and inasmuch as the decision below was in favor of the validity of the State statute and the action of the State Tax Commission thereunder, it is submitted that, under the provisions of U. S. C. A., Title 28, §344, this Court will review the decision upon appeal in the nature of a writ of error, under the provisions of the Act of Congress of January 31, 1928, c. 14, as amended by the Act of Congress of April 26, 1928.

Questions Presented.

This case raises questions concerning the legality of the assessment on the capital stock of a Maryland corporation by the State Tax Commission of Maryland, all of the shares of which are held by a non-resident of that State, *i. e.*, a corporation of the Commonwealth of Pennsylvania, with its place of business in Pennsylvania and doing all of its business in Pennsylvania.

The assessment of the tax is attacked as unlawful because (1) the owner and holder of the shares of stock was a resident of the Commonwealth of Pennsylvania and subject to taxation in that State and is therefore entitled to an exemption from taxation by the State of Maryland upon such intangible property, the situs of which for taxation is in Pennsylvania; (2) the value fixed as the basis for assessment includes a value attributable to the Federal License granted The Susquehanna Power Company by the Federal Power Commission, which is not subject to taxation directly or indirectly by the State of Maryland; and (3) the assessment of the tax is based upon an arbitrary value required by the provisions of a statute of the State of Maryland, which provisions are invalid because repugnant to the Constitution of the United States.

STATUTES INVOLVED.

The Statutes involved are printed in the Appendix, *infra*, pages 35-46.

STATEMENT OF CASE.

This case is an appeal from a final judgment of the Court of Appeals of the State of Maryland which sustains an assessment of a tax by the State Tax Commission of Maryland purporting to be levied under the provisions of Article 81, Sections 154, 163, 166-166A, of the Maryland Code, against all of the shares of the stock of the Appellant which are owned and held by Philadelphia Electric Power Company, a corporation of the Commonwealth of Pennsylvania with its place of business in Pennsylvania, doing all of its business in Pennsylvania and having no office or business in the State of Maryland. In assessing the tax against the owners of the shares of stock of a Maryland corporation it is provided by Public General Laws of Maryland (1924), Article 81, Section 163, that:—

"in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several Counties and City of Baltimore, whether the shares of said stock are quoted on the market or not;"

By Pub. Gen. Laws of Maryland (1924), Art. 81, Section 166, it is provided that:—

"The respective taxable value of the shares of stock in such * * * corporation * * * shall be ascertained by the State Tax Commission in the manner following: *he* shall deduct the assessed value of such real property * * * belonging to the said * * * corporations * * * from the aggregate value of all shares of such * * * corporations * * * and divide the remainder by the number of shares of the capital stock * * * and the quotient shall be the taxable value of each of such respective shares for State purposes * * * and the said taxable value of such of said stock or shares as are held by *non-residents** of this State, shall for county and municipal purposes be valued to the owners thereof in the County or City in which said * * * corporation * * * is situated; but all County or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such * * * * corporation * * * and when so paid shall or may be charged by such * * * corporation * * * to the account of such stockholders or shareholders respectively;"

The Appellant is a corporation of the State of Maryland and by Section 5 of its "1908 Charter," (Laws of Maryland 1908, Chap. 268, see Appendix), it is provided that the Appellant's powers are expressly granted in "aid of the powers of congress," and said Appellant is a Licensee (Record in Case No. 368, pp. 288-311) of the Federal

*Italics in quotations throughout this Brief are ours, unless otherwise noted.

Government under The Federal Water Power Act of Congress of June 10, 1920 (41 Stat. L. p. 1063). All of the 245,500 shares of the capital stock of the Appellant are owned by a non-resident of the State of Maryland (Rec. p. 65), viz., Philadelphia Electric Power Company, a corporation of the Commonwealth of Pennsylvania with its only place of business in the Commonwealth of Pennsylvania (R. p. 71)

All of the shares of capital stock of the Appellant, owned by its non-resident stockholder, have been assessed for taxation in Harford County, Maryland (R. p. 13), where the principal office of Appellant is located (R. p. 7).

The final Order of the State Tax Commission (R. p. 13, 18-19) fixed the aggregate value of all the shares of capital stock of the corporation for the year 1929 at $28,726,132. and deducted therefrom, as assessed value of real estate, $22,726,132., leaving the net aggregate assessment of $6,000,000. on all of said 245,500 shares of stock, or a net assessment of $24.43 per share (Rec. p. 13).

The indebtedness of Appellant is $41,954,999 (R. p. 15). It would follow that, after the required deduction of the assessed value of the real estate is made, the value attributable to the capital stock in this case, otherwise assessable, is wiped out by the indebtedness.

The "minimum provision" in Section 163 above quoted compels the fixing of a value to the capital stock for taxation on a base, whichever may be higher, either that of the tangible property of the corporation or that of the shares of stock. This provision requires the State Tax Commission to ignore the indebtedness of the corporation in many cases and as in the instant case results in an assessment against the stock greatly in excess of its proved value.

The description of the property owned and the use to which the property is put, in the State of Maryland, pursuant to the License granted this Appellant by the Federal Power Commission, is set forth in detail in the Record and Briefs in the companion appeal in this Court of The Susquehanna Power Company *v.* State Tax Commission of Maryland, No. 368, October Term, 1930.

RULINGS BELOW.

The Court of Appeals of Maryland sustained the assessment of the tax upon the shares of stock of The Susquehanna Power Company, owned and held by Philadelphia Electric Power Company, a corporation of and resident in the Commonwealth of Pennsylvania, and held that there was no arbitrary valuation of the shares of stock, and that the valuation fixed did not include the value of the franchise rights created under the License of the Federal Power Commission; and further held that there was no decision of the Supreme Court of the United States which denies the State of Maryland the right to tax the shares of stock owned by a non-resident because this right had been recognized in the case of Corry *v.* Baltimore City, 196 U. S. 466, and had not been disturbed by any of the later decisions.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

I.

That said Court of Appeals of Maryland erred in not reversing the judgment of the Circuit Court for Harford County, dated the 20th day of January, 1930, which affirmed the Order of the State Tax Commission of Maryland, dated the 18th day of December, 1929, assessing the capital stock of said Appellant for taxation, because the owner of said capital stock is a resident of the State of Pennsylvania, where the said stock is taxable, and the assessment thereof in the State of Maryland is double taxation, depriving Appellant and the owner of said stock of their property without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

II.

That said Court of Appeals of Maryland erred in not holding void the provision of Section 163 of Article 81 of the Public General Laws of Maryland (1924) requiring that in no case shall the capital stock of any corporation (such as the Appellant) in the aggregate, be valued for tax purposes at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation, and in approving the arbitrary assessment of said capital stock made pursuant to said Statute, at more than the fair value thereof, and thereby depriving said owner and said Appellant of their and its property, without due process of law, in contravention of the Constitution of the United States and of the Fourteenth Amendment thereof.

III.

That said Court of Appeals of Maryland erred in not holding that no value can be given to the capital stock of said Appellant in excess of the value of the real estate and chattels, real or personal, for assessment, because such excess would include in such assessment the value of the franchise rights of the corporation, granted to it under the license of the Federal Power Commission, and such value is not subject to assessment for taxation by the State of Maryland, or any political subdivision thereof, because said Appellant under said license is a Federal Agent and instrumentality to improve the navigation upon a navigable river, which is a highway of interstate commerce.

ARGUMENT.

Summary.

This appeal raises three questions under the Constitution of the United States:—

One is whether the State of Maryland may tax a non-resident because of the ownership of *intangible* property

consisting of stock of a Maryland corporation, although such non-resident is not engaged in business in the State of Maryland and has no office and does no business outside of the Commonwealth of Pennsylvania.

A second question is whether, under a State law providing for an assessment for taxation of the stock of a corporation, which requires the State Tax Commission to find the aggregate value of all shares and then deduct therefrom the assessed value of all real property owned by the corporation and taxed separately, if the facts before the State Tax Commission show that the net value of all physical property is insufficient to leave a value applicable to the capital stock after making the required deductions, an assessment is made lawfully which includes a valuation given to the privilege or franchise acquired by the corporation under a Federal License from the Federal Power Commission to operate its physical property located on the Susquehanna River, a navigable river in the State of Maryland.

It is also asserted by the Appellant that the provisions of the State law which demand that a minimum arbitrary valuation be fixed by the State Tax Commission at no less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the State of Maryland, thereby requiring that no consideration be given to or deduction made of the indebtedness of the corporation, is a provision repugnant to the provisions of the Federal Constitution.

(1) The owner and holder of the shares of stock was a resident of the Commonwealth of Pennsylvania and subject to taxation in that State and is therefore entitled to an exemption from taxation by the State of Maryland upon such intangible property the situs of which for taxation is in Pennsylvania.

The taxing authorities of the State of Maryland levied a tax upon the capital stock of the Appellant. The tax in question was assessed against all of the stock of the Ap-

pellant and the tax judgment is against the Appellant, because all of its stock is owned and held by a non-resident, to wit, by Philadelphia Electric Power Company, a corporation of the State of Pennsylvania which has no office and does no business in the State of Maryland. The State law requires the corporation to be answerable for the payment of such taxes to the extent that the stock which is the subject matter of the tax is owned by non-residents, although where the ownership is by residents of the State the payment is collected from such residents individually.

The tax in this case is in reality a tax against the non-resident shareholder and while it is imposed on this Appellant in the first instance for the purpose of collection, this Appellant is entitled to reimbursement from the non-resident stockholders and the amount paid constitutes a lien upon such shareholder's stock and the corporation may proceed by personal action against the non-resident shareholder to recover the amount paid. It is not a tax on the stock *in rem* or on the corporation. It is not a tax against the tangible property of the corporation nor a tax levied against the corporation as a corporate entity.

Even though the conclusions reached in *Corry* v. *Baltimore*, 196 U. S. 466 (1904), appear to have been overruled in principle by the recent decisions of this Court the nature of the tax under consideration in the present case is so clearly set forth in the opinion of Mr. Justice White in that case that the following quotation leaves no doubt concerning the character and effect of this Maryland tax (p. 472):—

> "In case of stock in Maryland corporations owned by non-residents the statutes declare that the situs of such stock, for the purpose of taxation, shall be at the principal office of the corporation in Maryland, and such shares are there assessed at their value to the owners. The statutes undoubtedly impose upon a Maryland corporation the duty of paying for and on account of the owners the taxes assessed in respect of the shares, and compel such payment without reference to the dividends, giving to the corporation a lien upon the shares of stock,

and entitling the corporation, when it pays the taxes, to proceed by a personal action to recover the amount paid. *Dugan* v. *Mayor of Baltimore*, 1 G. & J. 499, 502; *Mayor &c.* v. *Howard*, 6 H. & J. 383, 394; *American Coal Co.* v. *Allegheny Co. Comrs.*, 59 Maryland 185; *Hull* v. *Southern Development Co.*, 89 Maryland 8, 11.

"The Maryland decisions have also settled that the tax is on the stockholder personally because of his ownership of the stock, and is not on the stock *in rem* or on the corporation. The Maryland doctrine on the subject is shown by the opinion of the Court of Appeals of Maryland in *United States Electric Power & Light Company* v. *State*, 79 Maryland 63, where the court said (p. 70):—

" 'But the tax is not a tax upon the stock or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the state tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and under existing laws are taxable property. They belong to the stockholders respectively and individually, and when for the sake of convenience in collecting the tax thereon, the corporation pays the state tax upon these shares into the state treasury, it pays the tax not upon the company's own property, nor for the company, but upon the property of each stockholder and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence when the owner of the shares is taxed on account of his ownership and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all.' "

The question, therefore, is whether the State of the domicile of the corporation has the power to tax a non-resident stockholder based upon an assessment of the value of the

intangible property owned by such non-resident. This question was disposed of by the learned Court below as follows (Record, pp. 71, 72) :—

> "The remaining contention is that as all of appellant's stock is held by the Philadelphia Electric (Power) Company, a non resident corporation it cannot be taxed at all in this state. The stock was assessed to the non resident at appellant's principal office in Bel Air, Harford County, Maryland, under the authority of Code Art. 81 sec. 154 and the appellant is required to pay all taxes levied thereon. *Ibid* secs. 163, 166, 166A. The objection therefore goes beyond the immediate assessment and reaches the statutes under the authority of which it was made. The effect of those statutes was to fix the situs of stock in a Maryland corporation held by a non resident, in the county or city where such corporation was situated, to impose upon the corporation an obligation to pay any valid tax levied thereon, and to authorize it to charge such payment to the account of the stockholder, and such was the law not only at the time the Company was incorporated, but at the time Corry *v.* Baltimore City *infra* was decided, Acts 1896 Ch. 120 sec. 141. The question therefore falls precisely within the decision of this court in Corry *v.* Baltimore City, 96 Md. 310 in 1903, and of the Supreme Court in Corry *v.* Baltimore, 196 U. S. 465 decided in 1905, and Hannis Dist. Co. *v.* Baltimore, 216 U. S. 285 decided in 1910, in which the validity of those statutes was established. But it is asserted that the Supreme Court in two recent cases, Safe Deposit Co. *v.* Virginia, 280 U. S. 83, and Farmer's Loan and Trust Co. *v.* Minnesota, 280 U. S. 204, has rendered the authority of the Corry case doubtful. But after a careful examination of those cases we are unable to agree with that conclusion."

* * * * * * * *

> "Neither of those decisions involved the questions presented here and decided in Corry *v.* Baltimore

supra, which are (1) that a state may determine the situs of stock issued by a corporation chartered by it and owned by non residents, where the legislation effecting that result was in existence at the time the charter was granted, and (2) that as an incident of that power it may require the corporation to pay the tax, and (3) may authorize it to charge such payment to the account of the stockholder.

"Nor are the reasons which led the court in the Minnesota case to overrule Blackstone *v.* Miller 188 U. S. 189 present in this case, but on the contrary if judicial decisions are to be controlled by the changing demands of trade and commerce and considerations of public policy, such considerations inevitably demonstrate the wisdom of the conclusion reached in Corry *v.* Baltimore *supra.* There is no question of double taxation presented here, but the essential question is whether the stock is to escape taxation altogether in the state where the tangible property which it represents is situated."

The best answer to the reasoning of the learned Court below and the conclusions based thereon is found in the language of the majority of this Court in the following decisions:—

Baldwin v. *Missouri,* 281 U. S. 586, at page 591:—

Mr. Justice McReynolds;

"The challenged judgment rests upon the broad theory that a state may lay succession or inheritance taxes measured by the value of any deposits in local banks passing from a non-resident decedent; also upon the value of bonds issued by the United States and promissory notes executed by individual citizens of the state when devised by such non-resident if these bonds or notes happen to be found within the confines of the state when death occurs. The cause was decided below

prior to our determination of Farmers Loan & T. Co. *v.* Minnesota, 280 U. S. 204, *ante*, 371, 50 Sup. Ct. Rep. 98. Blackstone *v.* Miller, 188 U. S. 189, 47 L. ed. 439, 23 Sup. Ct. Rep. 277, was cited in support of the conclusion reached. Considering Farmers Loan & T. Co. *v.* Minnesota and previous opinions there referred to, the theory upon which the court below proceeded is untenable and its judgment must be reversed."

Farmers Loan & Trust Company v. *State of Minnesota*, 280 U. S. 204, at page 209:—

Mr. Justice McReynolds;

"Blackstone *v.* Miller, *supra*, and certain approving opinions, lend support to the doctrine that ordinarily choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two states may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the 14th Amendment. The inevitable tendency of that view is to disturb good relations among the states and produce the kind of discontent expected to subside after establishment of the Union. The Federalist, No. VII. The practical effect of it has been bad; perhaps two thirds of the states have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. Blackstone *v.* Miller no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled."

Further on page 211:—

"Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the state

where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two states apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction. Primitive conditions have passed; business is now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive taxation, is matter of the greatest moment. Twenty-four years ago Union Refrigerator Transit Co. *v.* Kentucky, *supra*, declared: 'In view of the enormous increase of such property (tangible personalty) since the introduction of railways and the growth of manufactures, the tendency has been in recent years to treat it as having a situs of its own for the purpose of taxation and correlatively to exempt it at the domicile of the owner. And, certainly, existing conditions no less imperatively demand protection of choses in action against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction.

"Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general, intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.' The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota."

Safe Deposit & Trust Company v. *Commonwealth of Virginia*, 280 U. S. 83, at page 93:—

Mr. Justice McReynolds;

"Here we must decide whether intangibles—stocks, bonds—in the hands of the holder of the legal title with definite taxable situs at its residence, not subject to change by the equitable owner, may be taxed at the latter's domicile in another state. We think not. The reasons which led this court in Union Refrigerator Transit Co. *v.* Kentucky, 199 U. S. 194, 50 L. ed. 150, 26 Sup. Ct. Rep. 36, 4 Ann. Cas. 493, and Frick *v.* Pennsylvania, *supra*, to deny application of the maxim *mobilia sequuntur personam* to tangibles apply to the intangibles in appellant's possession. They have acquired a situs separate from that of the beneficial owners. The adoption of a contrary rule would 'involve possibilities of an extremely serious character' by permitting double taxation, both unjust and oppressive. And the fiction of *mobilia sequuntur personam* 'was intended for convenience, and not to be controlling where justice does not demand it.'

"No opinion of this court seems definitely to rule the exact point now presented."

And further on page 94:—

"Any general statement in the above opinions which may seem to interfere with the conclusion here announced must be limited and confined to the precise situation then under consideration.

"It would be unfortunate, perhaps amazing, if a legal fiction originally invented to prevent personalty from escaping just taxation, should compel us to accept the irrational view that the same securities were within two states at the same instant and because of this to uphold a double and oppressive assessment.

"The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

Beidler v. *South Carolina*, U. S. , 72 L. ed. 69 (1930), at page 70:—

Mr. Chief Justice Hughes;

"In reaching its conclusion as to the validity of the tax, the state court relied chiefly upon the decision of this Court in Blackstone *v.* Miller, 188 U. S. 189. That decision has been overruled, and it is now established that the mere fact that the debtor is domiciled within the State does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt by a decedent who is domiciled in another State. Farmers Loan & Trust Company *v.* Minnesota, 280 U. S. 204; Baldwin *v.* Missouri, 281 U. S. 586. The transfer is taxable by the State of the domicile of the deceased owner. Blodgett *v.* Silberman, 277 U. S. 1. Open accounts, including credits for cash deposited in bank, fall within this principle, and its application is not defeated by the mere presence of bonds or notes, or other evidences of debt, within a State other than that of the domicile of the owner. Baldwin *v.* Missouri, *supra*.

"It is sought to sustain the tax by South Carolina upon the ground that the indebtedness had what is called a 'business situs' in that State, and the state court adverted to this basis for the tax. In Farmers Loan & Trust Company *v.* Minnesota, *supra*, this Court reserved the question of business situs, saying: 'New Orleans *v.* Stempel, 175 U. S. 309, Bristol *v.* Washington County, 177 U. S. 133, Liverpool & L. & G. Ins. Co. *v.* Orleans Assessors, 221 U. S. 346, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile.' But a conclusion that debts have thus acquired a business

situs must have evidence to support it, and it is our province to inquire whether there is such evidence when the inquiry is essential to the enforcement of a right suitably asserted under the Federal Constitution.

"In the present case, beyond the mere fact of stock ownership and the existence of the indebtedness, there is no evidence whatever, having any bearing upon the question, save a copy of the decedent's account with the corporation, taken from his books which were kept by him in his office at Chicago. The various items of debit and credit in this account, in the absence of any further evidence, add nothing of substance to the fact of the indebtedness as set forth in the agreed statement and afford no adequate basis for a finding that the indebtedness had a business situs in South Carolina."

The question which is before this Court on this appeal was not disposed of in the Beidler case, *supra*, for the reason that the executors of the non-resident testator failed to contest the assessment of the tax upon certain shares of stock of the South Carolina corporation owned by the testator, but had they so contested for the same reasons that they contested the levy upon the other intangibles, a similar conclusion apparently would have been reached upon the question so raised.

(2) The value fixed as the basis for assessment includes a value attributable to the Federal License granted The Susquehanna Power Company by the Federal Power Commission, which is not subject to taxation directly or indirectly by the State of Maryland.

The Appellant contended that in spite of the assertion by the State Tax Commission that the valuation fixed for the stock of this corporation as a basis for the tax levied against the non-resident stockholder was arrived at "according to law," the evidence before the Commission was such

that no real value could be found for the stock unless a value were given to the rights acquired in the nature of franchises under the Federal License granted by the Federal Power Commission.

The evidence shows that the cost or book value of the total assets of the Appellant, including tangibles and intangibles, was $46,821,885.28, and that its indebtedness was $41,954,998.92. Its net worth on the undisputed evidence was $4,866,886.36 (R. 10). The applicable state law provides for a deduction of the assessed value of the real property which, for the year in question, is shown by the record to be $22,726,132. This valuation deducted from the net worth leaves no basis for an assessment of the capital stock insofar as tangible assets are concerned.

The evidence also shows that there was no market value for these shares, all of which were owned by the non-resident stockholder (R. 8). It follows, therefore, indisputably, that any value to be given to these shares must be that which is reflected by the right to operate the Conowingo Project in the bed of the Susquehanna River and this right is derived solely from the Federal License, without which no grant from the State of Maryland could be exercised.

The learned Court below disposed of this contention of Appellant in the following language (R. 70):—

> "And while it may be assumed that the appellant could not operate its project without the license, nevertheless it may be valued and assessed without including the actual value of the license, just as the property of a manufacturing or mercantile establishment may be taxed and assessed without including in the valuation the value of the license which enables it to operate. For the property of the corporation is separate and distinct from its right to operate or to use its property in a specific way."

This conclusion overlooks the fact that the tax under consideration was not a tax against the property of the

Corporation, but a tax against the non-resident stockholder based upon the value given to intangible property owned by it consisting of the shares of stock of the Appellant. If the valuation had reflected the value only of the property separate and apart from the right to operate under the Federal License the indebtedness would have absorbed such value, and left nothing for taxation. The only basis by which any value for the stock can be shown above the indebtedness and the deductible valuation given to real estate is that attributable to the Federal franchise. The decision of the learned Court of Appeals in this particular seems to be in conflict with the following decisions of this Court:

In *California* v. *Pacific Railroad Co.*, 127 U. S. 1, Mr. Justice Bradley of this Court said (p. 41):—

> "In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in McCulloch *v.* Maryland, 'the power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it, is not only derogatory to the dignity, but subversive of the powers of the government, and repugnant to its paramount sovereignty. It is unnecessary to cite cases on this subject. The principles laid down by this court in McCulloch *v.* Maryland, 4 Wheat. 316; Osborn *v.* The Bank of the United States, 9 Wheat. 738; and Brown *v.* Maryland, 12 Wheat. 419; and in numerous cases since which have followed in

their lead, abundantly sustain the views we have expressed. It may be added that these views are not in conflict with the decisions of this court in Thomson *v.* Pacific Railroad, 9 Wall. 579, and Railroad Co. *v.* Peniston, 18 Wall. 5. As explained in the opinion of the court in the latter case, the tax there was upon the property of the company and not upon its franchises or operations. 18 Wall. 35, 37.

"The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid. It is not an idle objection, therefore, made by the company against the tax imposed in the present cases."

And concludes (on p. 45):—

"It follows that in each one of the cases now before us, the assessment made by the State Board of Equalization comprised the value of franchises or property which the board was prohibited by the constitution of the State or of the United States from including therein; and that these values are so blended with the other items of which the assessment is composed that they cannot be separated therefrom. The assessments are, therefore, void."

The method of valuation adopted by the taxing authorities of Maryland, excused by the Court of Appeals of Maryland but condemned by the decisions of this Court because inclusive of a non-taxable license or franchise, is almost identical with the method adopted by the State of Kentucky and condemned by this Court in *Louisville Ferry*

Company v. *Kentucky*, 188 U. S. 385, in which Mr. Justice Harlan said (pp. 393, 395, 398):—

"It thus appears from the admitted facts and from the opinion of the court below that the State Board, in its valuation and assessment of the franchise derived by that company from Kentucky, included the value of the franchise obtained from Indiana for a ferry from its shore to the Kentucky shore. In short, as stated by the Court of Appeals, the value of the franchise of the ferry company was fixed 'as if it conducted all of its business in the territorial limits of the State of Kentucky,' making no deduction for the value of the franchise obtained from Indiana. * * *

"As, then, the privilege of maintaining the ferry in question from the Indiana shore to the Kentucky shore is a franchise derived from Indiana, and as that franchise is a valuable right of property, is it within the power of Kentucky to tax it directly or indirectly? It is said that the Indiana franchise has not been taxed, but only the franchise derived from Kentucky; that the tax is none the less a tax on the Kentucky franchise, because of the value of that franchise being increased by the acquisition by the Kentucky corporation of the franchise granted by Indiana. This view sacrifices substance to form. If the Board of Valuation and Assessment, for purposes of taxation, had separately valued and assessed at a given sum the franchise derived by the ferry company from Kentucky, and had separately valued and assessed at another given sum the franchise obtained from Indiana, the result would have been the same as if it had assessed, as it did assess, the Kentucky franchise as an unit upon the basis of its value as enlarged or increased by the acquisition of the Indiana franchise. * * *

"The taxation of that franchise or incorporeal hereditament by Kentucky is, in our opinion, a deprivation by that State of the property of the ferry company without due process of law in violation of

the Fourteenth Amendment of the Constitution of the United States; as much so as if the State taxed the real estate owned by that company in Indiana."

In *Panhandle Oil Company v. Knox*, 277 U. S. 218, Mr. Justice Butler said (p. 221):—

"The States may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of federal functions."

This Court in *Long* v. *Rockwood*, 277 U. S. 142, denied to the State of Massachusetts the power to tax royalties derived from a patent, in this language (p. 147):—

Mr. Justice McReynolds;

"The power to exclude others granted by the United States to the patentee subserves a definite public purpose—to promote the progress of science and useful arts. The patent is the instrument by which that end is to be accomplished. It affords protection during the specified period in consideration of benefits conferred by the inventor. And the settled doctrine is that such instrumentalities may not be taxed by the States."

It is suggested that if the words "Licensee" and "Federal License" are substituted for "patentee" and "patent," this conclusion applies exactly to the case at bar.

The Macallen Company v. *Massachusetts*, 279 U. S. 620, affirms California *v.* Pacific Railroad Co. (*supra*), and denies to a State the power to tax indirectly a non-taxable subject. On page 628 of the Macallen case this Court said:

"Not only may the power to tax be exercised oppressively, but for one government—state or national—to lay a tax upon the instrumentalities or securities of

the other is derogatory to the latter's dignity, subversive of its powers, and repugnant to its paramount authority. See California *v.* Pacific Railroad Co., 127 U. S. 1, 41. These constitute special and compelling reasons why courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which in substance and reality is what it pretends to be, and a scheme to lay a tax upon a non-taxable subject by a deceptive use of words. The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a non-taxable subject at once suggests the probability that it was the latter rather than the former that the law-maker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well-established rule that '* * * what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result * * * constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation.' Fairbank *v.* United States, 181 U. S. 283, 294, 300."

In the opinion of the Court of Appeals of Maryland in the record in this Court on appeal in The Susquehanna Power Co. *v.* State Tax Commission, No. 368, October Term, 1930, there is further support for the contention that the learned Court below sustained the action of the State Tax Commission which included the value of the Federal License in the taxable value given to the Appellant's property. The reasoning therein set forth shows the method by which this indirect tax is arrived at (p. 344, Record in No. 368):—

"Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project

by permitting it to operate is taxable. Manifestly if the appellant were not permitted to operate its project, much of its property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises can not be ignored, Consol. Gas etc. Co. *vs.* Baltimore, 101 Md. 541, in valuing its property."

Missouri v. Gehner, 281 U. S. 313, seems to hold that the Federal License granted for a purpose to benefit the United States is free from the burdens attempted to be imposed upon it by the State of Maryland (p. 321):—

"Neither ingenuity in calculation nor form of words in state enactments can deprive the owner of the tax exemption established for the benefit of the United States. Nat'l. Life Ins. Co. *v.* United States, 277 U. S. 508, 519, and cases cited. M'Culloch *v.* Maryland, 4 Wheat. 316, 431, 432, 436."

In *Klein* v. *Board of Tax Supervisors,* U. S. ; 75 L. ed. 65, Mr. Justice Holmes said (p. 66):—

"There is no doubt that a State may tax a corporation and also tax the holders of its stock. *Tennessee* vs. *Whitworth,* 117 U. S. 129, 136. The owners are different and, although the Appellant calls it a mischievous fiction, the property is different. While no doubt the property and expectations of the corporation are the backbone of the value of the shares, yet the latter may get additional value from another source."

The "additional value" which the State of Maryland has found and is attempting to tax in the instant case is Appellant's right to operate under the Fifty-Year Federal License.

(3) The assessment of the tax is based upon an arbitrary value required by the provisions of a statute of the State of Maryland, which provisions are invalid because repugnant to the Constitution of the United States.

By Public General Laws of Maryland (1924), Art. 81, Section 163, it is provided that:—

> "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several Counties and City of Baltimore, whether the shares of said stock are quoted on the market or not;"

The "minimum provision" had never been passed upon by the Court of Appeals of Maryland, until its opinion in the instant case. It was not a point decided in the Corry case, 196 U. S. 466, in which the method of stock taxation was attacked as invalid because a tax on the stockholders without sufficient notice.

The "minimum provision" of Section 163 above is a wholly arbitrary basis for the valuation and assessment of the shares of stock belonging to the stockholders.

The capital stock represents the net worth of the Appellant, and its real value necessarily depends as much upon the Appellant's indebtedness as upon the amount of its property or assets. Section 163 provides that when, in the assessment of stock, it appears that direct taxation of the personalty would produce a greater tax, the stock shall be given an artificial and flat value which bears no relation to the real value of the stock. Obviously Section 163 is not a valid exercise of taxing power, and imposes taxes arbitrarily and unreasonably by such a standard.

The learned Court below defends the assessment by the State Tax Commission, holding that the State would have the right to tax the personal property of a corporation by

direct assessment and disregard any indebtedness against it in fixing the taxable value, and because of that power the Court says (R. 69):—

> "Since it could have taxed such property directly without reference to such liens there is no valid reason why it may not be taxed indirectly through appellant's capital stock, on an assessment made without reference to liens or debts, for in neither case would the corporation be called upon to pay taxes upon more than the assessable value of its property. And there is no possible basis for the contention that the method adopted subjects any of the corporate property to double taxation. For under it the realty is subjected only to direct taxation, and the personal property only to indirect taxation, based in both instances on the fair value of the property taxed."

The Court also concluded that the express declaration of the Chairman of the Commission that it had considered the "net" assets of the corporation in fixing the value of the stock, justifies the conclusion that it cannot be assumed that its action was affected by the arbitrary mandate of the Statute (R. 68, 69). The justification for this assumption cannot be found in the record evidence for the reason that the undisputed testimony (R. 10) shows that the net worth was $4,866,886.36. This net worth, however, under the Maryland Statute could not sustain a taxable valuation of the capital stock of $6,000,000. given to it by the Commission, because in arriving at such taxable value the mandate of the Maryland Code requires a deduction of the assessed value of the real estate of the corporation, and this, as shown by the Record (p. 13) is the sum of $22,726,132. The reason urged by the learned Court below against a charge that the method of assessment required by the statute produced double taxation, by the showing that personal property of the corporation is not taxed under State law and the tax against capital stock is merely an indirect method of levying such a personal property tax, is interesting but

hardly conclusive in this case. The tax under consideration is not a tax against the corporation. There is no prohibition against legislation by the State of Maryland that would provide a direct tax against the personal property of this Appellant. On behalf of its non-resident stockholder, however, this Appellant asserts, with confidence, that the reasoning of the Court below cannot justify the tax which has been assessed against the stock holdings of the non-residents. The evidence as to double taxation resulting from the arbitrary assessment required by the Maryland Code is to be found by contrasting the tax liability of two classes of stockholders in a Maryland corporation. The resident owner of such intangible property as these shares of stock would pay a tax only to the State of Maryland (the domicile of the owner and situs of the intangible), but the non-resident stockholder pays twice, once to Maryland where the corporation is domiciled, and a second time to the State of his own domicile (where the situs of the intangible property justifies the levying of such tax). What has just been said is in answer to the suggestion of the learned Court below that the arbitrary assessment does not produce double taxation in any case. Regardless of the question of double taxation, it is the fact that the valuation is *arbitrary* which justifies the complaint that the State of Maryland by such a statute has violated the provisions of the Federal Constitution intended to afford protection to the taxpayer.

The learned Court below seems to excuse the failure of the State Tax Commission to deduct the indebtedness of the Appellant in arriving at the "aggregate value" of the capital stock by comparing the subject matter of assessment, which is the shares of stock of the corporation, with real estate as the subject matter for taxation. The learned Court correctly states the duty of the taxing authorities to arrive at the value of real estate for assessment without regard to the indebtedness existing against it, but the learned Court incorrectly assumes that in arriving at the aggregate value of the shares of stock of a corporation, the indebtedness of the corporation is not an element for consideration. No

actual value can be given to such shares of stock which is based solely upon a valuation of assets without deducting the liabilities that may be against them. The net worth of the corporation constitutes the aggregate value of its shares. When such aggregate value of the shares of the corporation is arrived at, the assessment against the stockholder is properly made without deducting from the value of his shares such indebtedness as *he* may have against them. This presents the analogy to the case assumed by the Court when determining the taxable value of real estate. In the latter, the outstanding indebtedness of the taxpayer against such real estate is properly ignored. In the case of shares of stock, the outstanding indebtedness of the owner of such shares against the stock may be properly ignored. In ascertaining the value of such shares, however, the indebtedness of the corporation in relation to its assets, if ignored, produces an arbitrary and unreal valuation of such shares and not the true and actual valuation thereof to which the shareholder is entitled.

In *Schlesinger v. Wisconsin*, 270 U. S. 230, this Court clearly stated that the basis for the assessment of the tax there under consideration was "wholly arbitrary" and that such a classification would be in plain conflict with the Fourteenth Amendment. In this case, as in that, the statute demands a finding of fact without regard to actualities. The State Tax Commission of Maryland was directed to value the shares of stock of this Appellant in the aggregate in a sum not less than the value for taxation placed upon the real estate of the corporation. If, as the Court below suggests, the Commission failed to follow the statutory mandate, there was no authority under the State law for the assessment which was made. If on the other hand the State Tax Commission followed the mandate, then, although authorized by the Statute so to do, the foundation of authority was invalid because it violated the Federal Constitution. The record facts seem to show conclusively that in either event the final taxable value found, completely ignored the indebtedness of the Appellant, which

was in excess of $41,000,000., and therefore, whatever method the State Tax Commission adopted, it reached a conclusion that cannot be sustained.

In the case of *Ohio Oil Company v. Conway*, 281 U. S. 146, this Court affirmed with approval its earlier decisions condemning the effort of a State to collect a tax on the basis of a valuation wholly arbitrary, and in that case Mr. Chief Justice Hughes says (p. 160):—

> "* * * there is a point beyond which the state can not go without violating the equal protection clause. The state may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The state is not at liberty to resort to a classification that is palpably arbitrary."

In *Air-Way Corporation* v. *Day*, 266 U. S. 71, this Court condemned as arbitary an annual fee payable by each foreign corporation under a statute of Ohio computed upon a charge per share of the entire authorized stock regardless of the value of the stock and the fact that it might not have been issued. It was there said by Mr. Justice Butler (p. 83):—

> "The fee determined by the lower court, as well as that fixed by the state officers, is arbitrary. Without holding that such a charge must be measured by the value of the privilege for which it is imposed, it may be said that some relation to such value is a reasonable requirement."

And further (on p. 83):—

> "The number of non-par value shares of the corporation is not an indication of, and does not purport to be a representation as to, the amount of its capital. Each outstanding share represents merely an aliquot part of its assets. The num-

ber of shares not subscribed or issued has no relation to the privilege held by plaintiff in Ohio, and it is not a reasonable measure of such a fee. Such shares may never be subscribed or issued, or additional shares may be issued to acquire property or do business in other States or to carry on interstate commerce. Plainly the fee, to the extent that it is based on a number of shares in excess of those outstanding, has no relation to what was paid in for the stock or to its value or to the amount of plaintiff's capital, its property or its business, intrastate in Ohio or interstate."

And finally (on p. 85):—

"It is clear that the mere number of authorized non-par value shares is not a reasonable basis for the classification of foreign corporations for the purpose of determining the amount of such annual fees. Such a classification is not based on anything having relation to the purpose for which it is made."

It seems so clear to this Appellant that if the power claimed by the State of Maryland is conceded by the final decision in this case, there is no limit to the amount of the tax which the State authorities may impose against this Appellant or its stockholders, and unless there is protection afforded by the Federal Constitution against the burden of arbitrary taxation, the future usefulness of this Appellant is of uncertain duration. It seems that freedom to tax will clearly result in the exercise of that power to the extent of practical destruction, and this Appellant has therefore appealed to this Court for that protection which may be expected from the language of Mr. Justice Holmes in *Panhandle Oil Company* v. *Knox, supra* (p. 223):—

"The power to tax is not the power to destroy while this Court sits."

The judgment of the Court of Appeals of the State of Maryland should be reversed.

Respectfully submitted,

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APPENDIX.

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 154.

"154. For the purpose of valuing the stock of banking and other private corporations held by non-resident stockholders, it is hereby declared and understood that the stock of banking, insurance or other corporations usually termed moneyed institutions is situate at the place at which the principal office for the transacting the business of such corporation is situated; the stock of a turnpike, railroad, steamboat, canal or other improvement corporation is situate at the place where its principal office for the transaction of business shall be established, if the said office be within the limits of this State, and shall be so assessed, and if not, then the assessable property of such corporation shall be valued and assessed in the county or counties in which said property is situate, and in the city of Baltimore so far as it is situate in said city; and the stock of mining, manufacturing and other like corporations situate at the place where the works of such corporation, or the greater part of their operations, respectively, shall be conducted, shall be assessed in like manner in the county or city where such works are situate.

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 163.

"163. The president or other proper officer of the banks, State and national, and other incorporated institutions in the several counties, the city of Baltimore and other incorporated towns of Maryland, shall annually, on or before the first day of March, furnish to the county commissioners of each county or the appeal tax court of Baltimore city, and the city clerk of each city, town or village incorporated in the State

of Maryland, in which any of its stockholders may reside, a list of the said stockholders, so far as their place of residence may be known to such officer, together with the number of shares of stock held by each. Said list shall show the stockholders of such banks and other incorporated institutions as they stand on the first day of January preceding, together with their residences and the number of shares held by each on said date, and the taxable value of such respective shares of stock, ascertained as hereinafter provided, shall for county and municipal purposes be valued to the owners thereof in the manner hereinafter as of the preceding first day of January of each year, and taxes thereon shall be collected for such banks and other incorporated institutions in the manner hereinafter provided, as of the said first day of January. In case the president or other proper officer of said bank or other corporation fail or refuse to furnish a statement as herein required to the county commissioners or appeal tax court or city clerk aforesaid, on or before the day hereinbefore specified for that purpose, then for each day that shall thereafter elapse until the said statement shall be furnished, the said bank or other corporation shall pay to the county commissioners; or mayor and city council of Baltimore, or other municipal corporation, as the case may be, the sum of one hundred dollars; and for the valuation and effectual collection of taxes asesssed on the stock of banks or other incorporated institutions, held by non residents, the president or other proper officer of the corporation shall annually, on or before the first day of March, make out and deliver to the county commissioners of the county or the appeal tax court, or city clerk of the municipal corporation where said corporation is situate, an account of the number of shares of stock in such corporation held by persons not residents of this State as of the first day of January preceding, and the same shall be valued at its actual cash value, to and in the name of such stockholders, respectively, as of said

first day of January preceding; but the tax assessed on such stock shall be levied and collected from said corporation, and may be charged to the account of such non-resident stockholders in the said corporation, and shall be a lien on the stocks therein held by such stockholders, respectively, until paid, *and in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation* in the several counties and city of Baltimore, whether the shares of said stock are quoted on the market or not; in case of failure or refusal to comply with this requirement the said bank or other incorporated institution shall be liable to the penalty hereinbefore prescribed; and the president and cashier or treasurer of any such bank or other incorporated institution failing to comply in every respect with the provisions of this section shall be liable to indictment therefore, and on conviction shall be fined not less than five hundred dollars nor more than five thousand dollars, in the discretion of the court, and shall stand committed until such fine is paid."

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 166.

"166. At the time of making the returns of stockholders, to the County Commissioners and appeal tax court of Baltimore City, as required by law, the President or other proper officer of every bank or other incorporated institution incorporated under the laws of this State or doing business therein, and of every joint stock company doing business in this State shall furnish to the County Commissioners of each County in which such bank or other incorporated institutions or joint stock company shall own or possess any real property and tools, machinery, manufacturing imple-

ments and engines of corporations actually engaged in manufacturing, and to the appeal tax court of Baltimore City, if such bank or other incorporated institution or joint stock company shall own or possess any real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing in said city, a true statement of such real property, and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing, situated or located in such County or City and such real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing shall be valued and assessed by said County Commissioners and appeal tax court, respectively, to the said bank or incorporated institution or joint stock company so owning the same, and the said County Commissioners and appeal tax court shall give duplicate certificates of such valuation and assessment to such President or other officer, who shall transmit one of such duplicate certificates with his return to the State Tax Commission, and State, County and City taxes shall be levied upon and paid by such bank or other incorporated institution or by such joint stock company on such assessment in the same maner as the same are levied upon and paid by individual owners of real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing in such County or City in accordance with the terms of Section 169 of this Article as amended; the respective taxable value of the shares of stock in such bank, corporation and joint stock companies shall be ascertained by the State Tax Commission in the manner following: He shall deduct the assessed value of such real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing belonging to the said respective banks, corporations or joint stock companies from the aggregate value of all shares

of such respective banks, corporations or joint stock companies and divide the remainder by the number of shares of the capital stock or shares of such respective banks, corporations or joint stock companies and the quotient shall be the taxable value of each of such respective shares for State purposes, and all State taxes thereon shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares or such banks, corporations or joint stock companies shall have been finally determined or made for State purposes, the State Tax Commission shall certify to the County Commissioners of each County where any of the stockholders or shareholders may reside, and to the appeal tax court of Baltimore City, if any of said stockholders or shareholders reside in said City, and to the County Commissioners of the County in which said bank, corporation or joint stock company is situated, or to the appeal tax court of Baltimore City, if it is situated in said City, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint stock companies, owned by residents of this State, and taxable within this State, shall for County and Municipal purposes be valued to the owner thereof in the County or City in this State in which such owners shall respectively reside, and the said taxable value of such of said stock or shares as are held by non-residents of this State shall for County and municipal purposes be valued to the owners thereof in the County or City in which said bank, corporation or joint stock company is situated; but all County or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint stock company, and when so paid shall or may be charged by such bank, corporation or joint stock company to the account of such stockholders or shareholders, respectively; but it is expressly

provided that all railroad companies working their roads by steam power incorporated by, or under the laws of this State or any other State, territory, District of Columbia or foreign country and doing business in this State, shall respectively be subject to the annual State tax upon their respective gross receipts within the State, prescribed by Section 172, which shall be paid and collected in a manner provided now or hereafter by law, and the real and personal taxable property belonging to such respective railroad companies shall be subject to County and municipal taxation to this State in the respective Counties and Cities in which such property is located; and where such respective railroad companies are subject to such gross receipts tax for State purposes, their shares of stock and real or personal property shall not be subject to taxation for State purposes, and when such real and personal property of such respective railroad companies is subject to County and municipal taxation, their respective shares of stock shall not be subject to County and municipal taxation, but the capital stock and property of all other corporations which are subject to a tax upon their gross receipts, other than railroad companies, shall be valued, assessed and taxed for State, County and municipal purposes like the capital stock and property of other corporations under this Article."

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 166A.

166A. At the time of making the returns of stockholders to the County Commissioners and Appeal Tax Court of Baltimore City, as required by law, the president or other proper officer of every bank or other incorporated institution incorporated under the laws of this State or doing business therein, and of every joint stock company doing

business in this State, shall furnish to the County Commissioners of each county in which such bank or other incorporated institution or joint stock company shall own or possess any real property, and to the Appeal Tax Court of Baltimore City, if such bank or other incorporated institution or joint stock company shall own or possess any real property in said city, a true statement of such real property, situate or located in such county or city, and the president or other proper officer of every fire and life insurance company incorporated under the laws of this State and doing business therein shall also furnish to the County Commissioners of each county in which it shall have any mortgages on real or leasehold property, and to the Appeal Tax Court of Baltimore City in which it shall have any mortgages on real or leasehold property in such county or city, a list of such mortgages showing the amount then due thereon, and such real property shall be valued and assessed by said County Commissioners and Appeal Tax Court respectively, to the said bank or incorporative institution or joint stock company so owning the same, and the said County Commissioners and Appeal Tax Court shall give duplicate certificates of such valuation and assessment, and of the amount shown to be due on mortgage by such list, to such president or other officer, who shall transmit one of such duplicate certificates with his return to the State Tax Commission, and State, county and city taxes shall be levied upon and paid by such bank or other incorporated institution or by such joint stock company on such assessment in the same manner as the same are levied upon and paid by individual owners of real property, in such county or city; the respective taxable value of the shares of stock in such bank, corporation and joint stock companies, save the taxable value of the shares of the stock of fire and life insurance companies incorporated under the laws of this State and doing business therein, shall be ascertained by the State Tax Commission in the manner following: It shall deduct the assessed value of such real property belonging to the said

respective banks, corporations or joint stock companies from the aggregate value of all shares of such respective banks, corporations or joint stock companies and divide the remainder by the number of shares of the capital stock or shares of such respective banks, corporations or joint stock companies and the quotient shall be the taxable value of each of such respective shares for State purposes; in the case of fire and life insurance companies incorporated under the laws of this State and doing business therein, the taxable value of the shares of the stock thereof shall be ascertained by State Tax Commission in the following manner: It shall deduct the total of the assessed value of any real property belonging to such company and the amount of mortgages owned by such company, as shown by the aforesaid certificate thereof, from the aggregate value of all shares of its capital stock and shall divide the remainder by the number of shares of the capital stock or shares of such respective fire and life insurance company incorporated under the laws of this State and doing business therein, and the quotient shall be the taxable value of such respective shares of such fire and life insurance company for State purposes, and all State taxes thereof shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares of such banks, corporations or joint stock companies shall have been finally determined or made for State purposes, the State Tax Commission shall certify to the County Commissioners of each county where any of the stockholders or shareholders may reside, and to the Appeal Tax Court of Baltimore City, if any of said stockholders or shareholders reside in said city, and to the County Commissioners of the county in which such bank, corporation or joint stock company is situated, or to the Appeal Tax Court of Baltimore City, if it is situate in said city, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint stock companies, owned by residents of this State, and taxable within

this State, shall for county or municipal purposes be valued to the owner thereof in the county or city in this State in which such owners shall respectively reside, and the said taxable value of such of said stock or shares as are held by non-residents of this State shall for county and municipal purposes be valued to the owners thereof in the county or city in which said bank, corporation or joint stock company is situated; but all county or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint stock company, and when so paid shall or may be charged by such bank, corporation or joint stock company to the account of such stockholders or shareholders, respectively; but it is expressly provided that all railroad companies working their roads by steam power incorporated by or under the laws of this State, or any other State, Territory, District of Columbia or foreign country and doing business in this State, shall respectively be subject to the annual State tax upon their respective gross receipts within the State, prescribed by Section 172, which shall be paid and collected in a manner provided now or hereafter by law; and the real and personal taxable property belonging to such respective railroad companies shall be subject to county and municipal taxation to this State, in the respective counties and cities in which such property is located; and where such respective railroad companies are subject to such gross receipts tax for State purposes, their shares of stock and real or personal property shall not be subject to taxation for State purposes, and when such real or personal property of such respective railroad companies is subject to county and municipal taxation, their respective shares of stock shall not be subject to county and municipal taxation, but the capital stock and property of all other corporations which are subject to a tax upon their gross receipts, other than railroad companies, shall be valued, assessed and taxed for State, county and municipal purposes, like the capital stock and property of other corporations under this Article.

ACT OF THE GENERAL ASSEMBLY OF MARYLAND 1908, CHAPTER 268, SECTION 5 (A PART OF APPELLANT'S "1908 CHARTER").

"SEC. 5. And be it further enacted, That in consideration of the construction by the said Susquehanna Power Company, its successors or assigns of a dam or dams in, along or across the said river and its shores and the canals, railroads, ferries or highways thereon, therealong or leading thereto, and backing the waters of said river, thereby either singly or in series to the elevation to which said dam or dams may be erected, and either with or without the aid of the canals hereinafter mentioned, said Susquehanna Power Company, its successors and assigns be and it is hereby declared to be also a slack water navigation company with all the powers and authorities of the charters of the Tidewater Canal Company and the proprietors of the Susquehanna Canal to the end that *in aid of the powers of Congress* it may create a safe and practicable navigation up and down said river, either upon the bed thereof, by means of said back water or otherwise, or by means of a canal or canals along the margin thereof, or by means of such methods conjointly, either above or below said dam or dams, to the end that real navigation of said river above tidewater in Maryland heretofore so often unsuccessfully attempted, may now be established, and in addition to its present powers, the said Susquehanna Power Company, its successors and assigns, is hereby vested with the following exclusive powers, liberties, privileges, benefits, franchises and immunities, that is to say:

"(*a*) To cut, re-cut or enlarge canals along the shores of said river, with dimensions commensurate with the beam, displacement tonnage and motive power of all vessels which shall navigate the back water formed by its said dam or dams, and erect, equip and maintain all dams, feeders, aqueducts, locks, wharves and basins,

and such other appurtenances and accessories thereto as may be necessary, and in order to acquire the necessary property for each of the objects aforesaid, shall have all the powers of section 3 herein as well as such powers contained in said charters of the proprietors of the Susquehanna Canal and Tidewater Canal Company as are duly applicable to such acquisition without limit to the quantity of land to be condemned except the necessity of said corporation as by it determined.

"(*b*) To acquire own and hold by purchase or otherwise the stock, franchises, property or assets of, or exchange stock with, merge with or consolidate with the said Tidewater Canal Company or the proprietors of the Susquehanna Canal or the 'Susquehanna Canal and Power Company' a corporation of Pennsylvania or of any other corporation or association, whatsoever or wheresoever, and also to assume pay or guarantee any indebtedness or contracts of any other corporation or association on such terms or conditions as may be mutually agreed upon.

"(*c*) To charge and collect tolls for the navigation of the bed of said river above its dam or dams or of the tail races thereof, not exceeding the rate of two cents per ton per mile, as a remuneration to said corporation for the improvements aforesaid."

FOURTEENTH AMENDMENT OF FEDERAL CONSTITUTION.

Section 1 of Article XIV of the Amendments of the Federal Constitution:—

"SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

COMMERCE CLAUSE OF FEDERAL CONSTITUTION.

Article I, Section 8 of the Constitution of the United States:—

"SECTION 8. The Congress shall have Power * * *.
"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

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U. S. C. A., TITLE 28, SECTION 344, SUB-SECTION (a).

"SUB-SECTION (a)—A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."